IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9998 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NINABEN J ANDHARIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9998 of 2001

MR RAJESH P MANKAD for Petitioner No. 1

MR.M.S. RAO, ASSISTANT GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 08/03/2004

ORAL JUDGEMENT

The present Special Civil Application is filed for the relief that the action of the respondents of not

paying House Rent Allowance (hereinafter referred to as "HRA") with effect from 01.07.2000 to the petitioner, though the petitioner is legally entitled, be declared unjust, improper, arbitrary, discriminatory and violative of Article 14 of the Constitution of India and the same be quashed and set aside. It is also prayed that a further direction be issued to respondent no.3 to pay HRA month to month to the petitioner and also arrears from 01.07.2000 till September 2001.

2. The facts of the case are that the petitioner joined the services on 20.02.1996 as Female Nurse. She was serving and rendering her services to the best of her abilities, was confirmed and being a confirmed Government employee is entitled to uniform service conditions and all other benefits as per the prevailing rules and regulations. The case of the petitioner is that the petitioner's husband, who is working as Male Nurse with respondent no.3 had applied for rent free Government quarter, which was allotted to him from the common pool. At that time, the petitioner was serving as Female Nurse in other Government Hospital. Thereafter, on 04.07.2000 the petitioner was transferred to Sir Taktasinhji Hospital, Bhavnagar, where the petitioner's husband was serving as Male Nurse. The petitioner started living with her husband in the rent free quarter allotted to the petitioner's husband from July 2000.

3. The petitioner addressed a communication dated 09.11.2000 to respondent no.3, Medical Officer, Sir Taktasinhji Hospital, Bhavnagar and requested to pay her HRA along with arrears from the month of July 2000 to October 2000. As there was no reply to the said communication the petitioner again wrote on 11.12.2000. The request of the petitioner was responded only in the month of May 2001. The petitioner found the said reply to be evasive. Again by letter dated 04.06.2001, the petitioner was informed that in view of the Government Resolution dated 23.07.1993 the petitioner is not entitled to HRA. The petitioner after having received the aforesaid two communications wrote letters dated 12.07.2001 and 31.07.2001 and clarified the position as to how the Government Resolution dated 23.07.1993 is not applicable to her. The petitioner also placed reliance on the judgement of this Court in First Appeal No.1174 of 1992, which is reported in "Gujarat Civil Services Tribunal" at page 183, a copy of which is produced at Annexure 'D' to this petition. The aforesaid First Appeal No.1174 of 1992 was decided by this Court (Coram: K.G. Shah, J.) on 21.12.1992.

4. The case of the petitioner is that despite the best possible persuasive efforts on the part of the petitioner, the respondents did not accede to the demand of the petitioner and have not paid the HRA from July 2000 and therefore, the petitioner has approached this Court by way of this petition. The petition was admitted by this Court by order dated 24.10.2001, when the court issued rule and also notice as to interim relief returnable on 04.12.2001. The matter after being adjourned on couple of occasions on 22.01.2002, the Court passed the following order:

> "Heard Mr.Mankad for the petitioner and Mr.K.G. Sheth, learned AGP for the respondents. In the facts and circumstances of the case, interim relief as prayed for cannot be granted, as it may amount to allowing the petitioner at this stage. Instead, the main matter is required to be heard expeditiously and accordingly, the same is required to be heard in the first week of April 2002. The matter may accordingly be shown in the Board for final hearing in the first week of April 2002. Interim relief as prayed for is refused."

5. The matter is contested by filing an affidavit in reply by one Shri M.S. Bavishi, Administrative Officer of Sir T. General Hospital, Bhavnagar, wherein it is contended that the petitioner is not entitled for the HRA under the Government Resolutions. It is also contended that the petitioner is working as Staff Nurse in Sir T. General Hospital, Bhavnagar and her husband is also a Government servant, working as Male Nurse in the same Hospital and he is allotted Government quarter wherein the present petitioner is also residing with him. The Government by a Resolution dated 15.12.1975 prescribed the conditions for drawal of HRA. Clause (3) of the Government Resolution deals with 'HRA to the employees sharing accommodation'. The learned Assistant Government Pleader submitted that this provision is required to be understood by interpreting the same in light of the definition of the term, 'House Rent Allowance' provided in the Bombay Civil Service Rules, 1959 (hereinafter referred to as "BCS Rules"). HRA is defined as,

> "an allowance towards DEFRAYING house rent granted in localities where such rents are higher or granted in lieu of free quarters."

Clause (3) of the Government Resolution reads as under:

"3. House Rent Allowance will also be admissible to the Government servants drawing pay upto Rs.750/-, even in (sic.) (if) they share accommodation allotted for (sic.) (to) other Government servant, except the categories of Government servants mentioned below or share private accommodation subject only to the condition that they pay rent or contribute towards rent without reference to this account actually paid or contributed :-

(i) A Government servant shall not be entitled to House Rent Allowance if he shares Government accommodation allotted rent free to another Government Servant.

(ii) If he/ she reside in accommodation allotted to his wife/ her husband or to his/ her parents/ son, daughter by the Central Government/ State Government, an autonomous public undertaking or semi Government organisation such as a Municipality, etc.

Clause (3) provides for two sets of circumstances. One: in case where both, husband and wife are Government servants, and are occupying Government accommodation allotted to any one of them. Another, when a Government servant shares accommodation allotted to other Government servant, who is not related to him/ her.

6. Mr.M.S. Rao, the learned Assistant Government Pleader submitted that in cases where both the husband and wife are Government servants and are occupying Government accommodation allotted to one of them, there is no reason to grant HRA to a 'non allottee spouse'. He further submitted that one cannot lose sight of the fact that a non allottee spouse while sharing Government accommodation with his/ her spouse, does not incur any expenditure towards rent, which may be required to be defrayed. He submitted that it is in consonance with the policy of the Government of India, on the aspect of, 'grant of HRA' that the Finance Department of the Government has issued the aforesaid Resolution (No.PCR/ 3475/ 41/ M, dated 15.12.1975). He submitted that from the contents of the said Government Resolution, it is clear that the petitioner is not entitled to any HRA because the petitioner is sharing a rent free accommodation granted to her husband. Thus, she is not incurring any expenditure towards rent. Hence the question of defraying such expenditure, which is not incurred by the petitioner does not arise.

6. The learned Assistant Government Pleader further submitted that the confusion is created on issuance of 1977 Government Resolution. The provision made therein was read and interpreted without making proper reference to 1975 Government Resolution though the same was specifically mentioned in the later Government Resolution that 1975 Government Resolution is taken into consideration. He further submitted that clause (3) of 1977 Government Resolution reads as under:

> "(3) In cases where husband/ wife/ parent/ children, two or more of them being Government servants or employees of Central Government, autonomous public undertakings or semi-Government organisations like Municipality, Port Trust etc., share accommodation allotted to another Government servant, House Rent Allowance will be admissible to only one of them, at their choice."

7. The learned Assistant Government Pleader submitted that the phrase, "allotted to another Government servant" was to be interpreted in light of the contents of 1975 Government Resolution. As clause 3(i) of 1975 Government Resolution uses the same term, 'another Government servant' while clause 3(ii) of the said Government Resolution deals with 'sharing of accommodation by the Government servants who were the family members'. He submitted that unless clause 3 of 1977 Government Resolution is read in light of clause 3, subclause (i) of 1975 Government Resolution, the same could not have been understood and interpreted correctly. He submitted that in both the Government Resolutions the phrase, 'another Government servant' is used and therefore, it is required to be interpreted in such a manner that it makes possible to have harmonious reading of both the Government Resolutions. He explained the same by saying that if more than one family members happened to be Government servants and if they shared an accommodation allotted to another Government servant, who is not a family member, in that case, one of the Government servants (family members) was entitled to HRA at their choice. But if an accommodation allotted to one of the family members, is shared by another family member/s who is/ are also Government servant/s then there was no question of allowing any HRA to any of them. Because allowing any HRA to any of the family members will run counter to the basic concept of HRA, as is incorporated in the definition given in BCS Rules to the effect that, 'defraying house rent', to reimburse the expenditure incurred by a Government savant towards rent.

8. The learned Assistant Government Pleader submitted that when this aspect of the matter was brought to the notice of the Government, various departments and authorities issued 1993 Circular. He submitted that it so happened that somewhere in the month of April 1979, the office of the Accountant General vide its letter dated 20.04.1979 asked the Finance Department to clarify the exact intention of the provision contained in clause (iii) of the Government Resolution dated 20.10.1977 and also the context in which the word, 'allotted' has been used in the said clause (iii) especially in view of clause 3(ii) of the Government Resolution dated 15.12.1975. Mr.Rao submitted that the office of the Accountant General asked to clarify as to whether the phrase, 'another Government servant' appearing in clause (iii) of the Government Resolution dated 20.12.1977 and in clause 3(ii) of Government Resolution dated 15.12.1975, are to mean one and the same. It is submitted by the learned Assistant Government Pleader that the State Government vide Finance Department's letter dated 04.06.1979 clarified that in Government Resolution dated 15.12.1975 the phrase, 'another Government servant' is used for those Government servants whose family members are also Government servants and are sharing the same accommodation. Whereas the same expression, 'another Government servant' in Government Resolution dated 20.10.1977 is used for those Government servants who are not the family members of the sharer. The Government reiterated the same thing in its Circular dated 23.07.1993, a copy of which is produced at Annexure R-9 with the further affidavit in reply, filed by one Shri Man Mohan Srivastava, Principal Secretary, Finance Department, Gujarat Sachivalaya, Gandhinagar.

9. Mr.Mankad, the learned advocate for the petitioner submitted that this Court in its judgement in First Appeal No.1174 of 1992 has interpreted clause (3) of 1977 Government Resolution and therefore, it was not proper on the part of the Government to issue any clarification by way of a circular. He submitted that issuance of such clarification which is not in line with the decision of this Court, which was confirmed by the Division Bench of this Court in Letters Patent Appeal No.209 of 1993 on 28.04.1993, be viewed very seriously and it should be considered as an act amounting to contempt of court.

10. Mr.Rao, the learned Assistant Government Pleader, replying to the aforesaid contention submitted that firstly the decision of this Court in First Appeal

No.1174 of 1992 does not lay down a general proposition of law, interpreting clause (3) of of 1977 Government Resolution. Secondly, it is a decision rendered by this Court in the facts of that case and that being so, the decision is applicable to the Government servant who was party to that litigation. The learned Assistant Government Pleader invited attention of this Court to the facts of the case, which were before the Court in First Appeal, which are set out in para 3 of the judgement, which reads as under:

> "3. The facts are few and undisputed. The respondent, as said above, is a Class III female Staff Nurse serving at Bapunagar General Hospital. Her husband is also a Government servant, he being an officer in the Regional Transport Office under the control of the Director of Transport. Both of them are residing in a Government quarter allotted to the husband of the respondent. The husband of the respondent is paying to the Government rent at the rate of Rs.28.42 ps. per month, that being the standard rent as per the relevant rules applicable to him. Even in that state of affairs, in past, the appellants were paying to the respondent HRA at the prescribed rate. However, the Auditors raised objections pursuant to which the appellants stopped paying HRA to the respondent, and ordered the respondent to repay to them Rs.5,207.55 ps. being the total of the amounts paid by the appellants to the respondent, in past, under the head of HRA."

11. Mr.Rao, the learned Assistant Government Pleader submitted that while in the present case the husband of the petitioner is serving as Male Nurse in the same Hospital and is allotted a rent free quarter and the petitioner is sharing that rent free quarter with her husband. He submitted that in that view of the matter, the case of the petitioner will be governed by 1975 Government Resolution which provides for HRA to employees sharing accommodation. According to Mr.Rao the petitioner is not entitled to any HRA under 1975 Government Resolution. He submitted that the contents of 1977 Government Resolution are not applicable to the case of the petitioner because she is not sharing an accommodation allotted to 'another Government servant' who is not the family member. He further submitted that non grant of HRA is in consonance with the basic principles which govern the granting of HRA and also the policy of the Government enunciated in Government

Resolution of 1975. He submitted that in light of the clarification issued in 1993, the authorities have not committed any error in stopping the payment of HRA to the petitioner.

12. Mr.Mankad, the learned advocate at this juncture contended that the petitioner is accorded discriminatory treatment. He submitted that as set out in ground (c) of para 4 of the petition, several other employees who are staying with their family members, who are allotted Government quarters are getting HRA and therefore, denial of HRA to the petitioner is violative of Article 14 of the Constitution of India.

12.1 Mr.Rao, the learned Assistant Government Pleader submitted that it is categorically mentioned in further affidavit in reply filed by Dr.M.P. Singh, Medical Superintendent of respondent no.3, that the authorities have already started taking appropriate and prompt steps in all such cases to ensure that law is enforced uniformly in respect of aforesaid cases. He also stated that necessary recoveries will be made from such Government servants who have received HRA though they were not entitled for the same after following the principles of natural justice. Besides this, Mr.Rao, the learned Assistant Government Pleader assured this Court that the matter will be looked into by the highest authority, namely, the Secretary, Finance Department in coordination with the Secretary, General Administration Department and Secretary, Law to ensure the implementation of the correct position of law. Taking into consideration the fact that even if others have received or have been receiving HRA, this Court cannot be a party in perpetuating illegality. The petitioner has approached this Court seeking relief, which is to be considered in light of the facts of the case on hand and the applicable provisions of law. This Court in its considered opinion is of the view that the petitioner cannot be granted the relief as prayed for. More particularly, when the learned Assistant Government Pleader has assured this Court that the highest authorities are going to look into the matter and will see that the correct position of law is implemented, the factum of HRA being paid to several other employees cannot be the basis for granting the relief in this petition.

13. In view of the aforesaid discussion, the present petition fails and the same is dismissed. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)

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